



**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MEMORANDUM OPINION
(Dismissing Action After No Response)

By Order entered on July 24, 2018, the United States Court of Appeals for the
Fourth Circuit remanded this action to the Court

with instructions that defendant's pro se notice of appeal filed July 20, 2017 in the district court, be construed as an initial motion under 28 U.S.C. § 2255, that the Defendant be given the notices required under *Castro v. United States*, 540 U.S. 375 (2003), and that further proceedings be had in the district court in accordance therewith.

(ECF No. 37, at 1–2.) By Memorandum Order entered on August 9, 2018, the Court explained as follows:

As a preliminary matter, the *pro se* Notice of Appeal was filed on April 27, 2018, not on July 20, 2017. (ECF No. 29.) The Judgment was entered on July 20, 2017. (ECF No. 27.)

On July 23, 2018, the Court received a completed 28 U.S.C. § 2255 form from Petitioner. (ECF No. 34.) Nevertheless, in accordance with the Fourth Circuit's directives, the Clerk is DIRECTED to forward to Petitioner the form for filing a motion under 28 U.S.C. § 2255. Petitioner may either complete and return this new form to the Court or submit a statement to the Court indicating that he wishes to proceed with the § 2255 motion that he already sent to the Court. Petitioner must comply with the above directive within twenty (20) days of the date of entry hereof.

Any § 2255 motion that Petitioner files must conform to the rules governing such motions and be sworn to under the penalty of perjury. *See*

Rules Governing § 2255 Proceedings for the U.S. District Courts, Rule 2(b). Petitioner is also advised that § 2255 motions are subject to a one-year statute of limitations and a restriction against second or successive petitions. *See* 28 U.S.C. § 2255(f), (h).

More than twenty (20) days elapsed after the entry of the August 9, 2018, Memorandum Order and Petitioner did not respond. Nevertheless, the Court provided Petitioner with one more opportunity to demonstrate his interest in pursuing the action. By Memorandum Order entered on November 13, 2018, the Court directed Petitioner that he must comply with the directives of the August 9, 2018 Memorandum Order within fourteen (14) days of the date of entry thereof. The Court further explained that if Petitioner failed to respond, the Court would dismiss the action.

More than fourteen (14) days have elapsed and Petitioner failed to comply with the directives of the August 9, 2018 Memorandum Order or otherwise respond. Accordingly, the action will be dismissed without prejudice. A certificate of appealability will be denied.

An appropriate order shall issue.

 _____ /s/

HENRY E. HUDSON
SENIOR UNITED STATES DISTRICT JUDGE

Date: *Dec. 18, 2018*
Richmond, Virginia